

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

Montage Mortgage, LLC

Plaintiff,

vs.

Case No.: 3:17-cv-02971-B

**Pacific Union Financial, LLC, John Perry,
Valerie Coleman, Caitlin V. Cooke,
Eduardo Creque, Jessica M. Furr (Keen),
Kathy Keller, Fouad Naghmi, Tammy Neal,
Charles F. Peer, Michaelene Whyte, and
Melissa Willoby,**

Defendants.

MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED PETITION

TO THE HONORABLE JANE BOYLE:

Pursuant to Rule 12(b)(2) and Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants Valerie Coleman, Caitlin V. Cooke, Eduardo Creque, Jessica M. Furr, Kathy Keller, Fouad Naghmi, Tammy Neal, Charles F. Peer, Michaelene Whyte, and Melissa Willoby (“Individual Defendants”), move to dismiss Plaintiff’s Second Amended Petition for lack of personal jurisdiction and failure to state a claim. In support of their Motion, the Individual Defendants respectfully show the Court as follows:

I. SUMMARY OF ARGUMENT

Plaintiff Montage Mortgage, LLC (“Plaintiff”) brings this suit against its former employees, the Individual Defendants, now employed by Defendant Pacific Union. (Sec. Am. Pet. ¶¶ 5-14). Plaintiff’s Second Amended Petition alleges that the Individual Defendants “conspired to, and carried out the misappropriation of Montage’s trade secrets, confidential proprietary information, non-public consumer data, including customer lists, active loan

pipelines, lists of past Montage closed loans, and consumer loan files (“Montage’s Protected Business Information”) in violation of various state and federal laws.” (Sec. Am. Pet. ¶¶ 22, 30).

Plaintiff asserts that personal jurisdiction exists over the Individual Defendants pursuant to the Texas Long-Arm Statute, Texas Civ. Prac. and Rem. Code § 17.042, alleging that each of the Individual Defendants communicated with Pacific Union employees located in Texas “with the explicit expectation of profiting from the work performed in Texas, including origination, processing, and funding of misappropriated loans.” (*Id.* ¶ 20). However, these allegations are insufficient to confer personal jurisdiction.

None of the Individual Defendants live, work, or own property in Texas, and have not originated, processed, or funded loans involving customers or property located in Texas—the alleged conduct challenged here. (Sec. Am. Pet. ¶¶ 5-14). Consequently, neither general nor specific jurisdiction exists over the Individual Defendants justifying their being hailed into a forum to which they have no connection. Moreover, Plaintiff fails to state claims under RICO and the CFAA because it fails to properly plead the requisite elements of these offenses. Finally, this action should be dismissed because it is premature since Plaintiff fails to plead and show the satisfaction of a condition precedent to filing suit against the Individual Defendants—contractually mandated mediation prior to arbitration or court action.

II. BRIEF IN SUPPORT

As more fully set forth in the separate Brief in Support of the Motion to Dismiss the Second Amended Petition, the Individual Defendants seek dismissal of Plaintiff’s Second Amended Petition pursuant to Rules 12(b)(2) and 12(b)(6) of the Federal Rules of Civil Procedure respectively, because (1) this Court lacks personal jurisdiction over the Individual Defendants, and (2) Plaintiff fails to allege facts sufficient to state a claim for relief.

III. CONCLUSION

For the reasons set forth in the separate Brief in Support of the Motion to Dismiss the Second Amended Petition, the Individual Defendants respectfully request that this Court grant their Motion to Dismiss the Second Amended Petition.

Dated: November 3, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November 2017, copies of the forgoing were served using the CM/ECF system and via U.S. Mail and email as follows:

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